IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6270 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Appearance:
1. Special Civil Application No. 6270 of 2001
MR AMIT M PANCHAL for Petitioner No. 1
MR KB PUJARA for Respondent No. 1
MR MG NAGARKAR for Respondent No. 2
MR DN PATEL for Respondent No. 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE RAVI R.TRIPATHI)

#. Rule. Learned counsel for the respondents waive service of Rule.

#. The present Petition is filed for issuance of a writ of mandamus or a writ in the nature of mandamus and/or any other appropriate writ, direction or order directing the respondent no.1, Ahmedabad Electricity Company to provide electricity supply to the petitioner for its proposed Base Trans Receiver Station (BTS) installations in the buildings in question in the City of Ahmedabad on usual terms and conditions by charging necessary fees and on production of the structural stability certificate.

#. The case of the petitioner is that in view of the order passed by this Court dated 25-7-2000 and judgment and order dated 2-7-2001 in Special Civil Application No. 4578 of 1997 and the judgment and order dated 4-10-2000 in Special Civil Application No. 6794 of 1992, respondent no. 1 - Ahmedabad Electricity Company was not supplying the electricity on the ground that by the aforesaid orders of this Court, the Ahmedabad Electricity Company has to insist for the Building Use permission. Originally, Ahmedabad Electricity Company was the only respondent before us and thereafter the Ahmedabad Municipal Corporation and the Ahmedabad Urban Development Authority were joined as party respondents after the order of the Court dated 3-8-2001.

#. It is submitted by the learned counsel for the petitioner that the petitioner has to install Base Trans Receiver Station (BTS) for which the relevant requirement is that the building should have structural stability and not the Building Use permission, because the petitioner is not going to use the building as such for any other purpose except for installation of Base Trans Receiver Station (BTS) together with Antennae and Shelter and therefore insistence for Building Use permission is unwarranted so far as the petitioner is concerned. It is also submitted that even in the Public Interest Litigation in which the aforesaid judgments and orders are passed, the Court was not considering the question of use of the building as presently proposed by the petitioner and therefore insistence of Building Use permission is unwarranted. It is further submitted that an application for Building Use permission can be made either by the owner or the occupier of the building and the petitioner in stricto senso is neither owner nor occupier. Learned counsel for the petitioner has relied

on a letter of May 2001 of the Municipal Commissioner (Annexure D) wherein the question of granting permission to Ahmedabad Telecom District for putting up antennae was considered and norms were laid down for granting permission for installation of similar antennas. Learned counsel for the petitioner pointed out that by the said letter the Municipal Commissioner has stated that in future if other parties like Reliance Telecom, AT&T, Celforce and other institutions lodge their demands, the same will be considered on similar lines. It is also pointed out by the learned counsel for the petitioner that the said letter of Municipal Commissioner is approved by the Standing Committee of the Ahmedabad Municipal Corporation (Annexure C) in its meeting held on 31-5-2001.

#. The Deputy Municipal Commissioner of City of Ahmedabad by filing an affidavit has produced a copy of General Development Control Regulations which has a provision governing the putting up of structures proposed by the petitioner i.e. Regulation 21.11. It provides for telecommunication infrastructure (paging, cellular, mobiles, `V' SAV., MTNL etc. wherein about the location it is provided that the telecommunication infrastructure shall be either placed on the building roof tops or on the ground or open space within the premises subject to other regulations.

#. Learned counsel for the petitioner submits that the petitioner is ready and willing to abide by the said "General Development Control Regulations" so far as they are applicable to putting up of proposed structure by the petitioner and in particular Regulation No. 21.11 and ready to file an Undertaking before this Court to the effect that he will be abiding by the said Regulations and also to the effect that the safety aspect will not be compromised in any manner whatsoever. It may be noted that Regulation 21.11(c) provides for requirements that (i) every applicant has to obtain/procure the necessary permission from the "Standing Advisory Committee on Radio Frequency Allocation" (SACFA) issued by Ministry of Telecommunications, (ii) every applicant will have to produce the structural stability certificate from the registered structural engineer which shall be the liability of both parties and (iii) applicant has to produce/submit plans regarding the same.

#. In view of the readiness of the petitioner to file an Undertaking to comply with the "General Development Control Regulations on the subject, we direct that the Ahmedabad Electricity Company - respondent no. 1 herein

shall consider the application of the petitioner for granting supply of electricity in accordance with its Rules only for the installation of the BTS, Antennae and Shelter.

#. Learned counsel appearing for the Ahmedabad Municipal Corporation submits that even for the proposed BTS, shelter and antennae, the Building Use permission will be required. Taking into consideration the facts of the case as also the controversy before the Court in the aforesaid PIL matters, wherein the aforesaid orders and judgments have been rendered, we are of the opinion that the Building Use permission is not required for installation of BTS, shelter and antennae in the case of the present petitioner. However, it is made clear that the petitioner will be required to file an Undertaking as aforesaid to abide by the Regulations under which the structure in question will be governed as also by producing before the authorities a certificate regarding the structural stability of the building on which the petitioner proposes to install the above structures. The petitioner shall also fulfil the other requirements of Regulation 21.11 of General Development Control Regulations published by the Government of Gujarat under sub-clause (1) of Clause (4) and sub-section (1) of Section 17 of Town Planning Act in the Official Gazette (Annexure A to the affidavit filed by respondent no.2). The Undertaking shall be filed before the Court within a week, a copy of which shall also be given to respondent no.1.

With the observations aforesaid, the Petition is allowed. Rule is made absolute. Direct Service to respondent No.1 is permitted.

In the circumstances, there shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(RAVI R. TRIPATHI, J)

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